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10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911
20999	7590	12/24/2009	EXAMINER	
FROMMER LAWRENCE & HAUG			PIZIALI, ANDREW T	
745 FIFTH AVENUE- 10TH FL.				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re application of
Levine et al. : DECISION
Serial No. 10/730,459 : GRANTING
Filed: December 8, 2003 : PETITION
For: HYDROENTANGLING USING A
FABRIC HAVING FLAT FILAMENTS :
:

This is a decision on the PETITION FROM REQUIREMENT FOR RESTRICTION UNDER 37 CFR 1.144, filed on November 25, 2009.

In an action dated January 8, 2009, the examiner held claims 1-13 non-elected as being distinct from the originally elected invention. Following an unsuccessful request for reconsideration, the holding was repeated and made final in the final rejection of August 25, 2009. The instant petition was then timely filed on November 25, 2009 and is before the Director of Technology Center 1700 for consideration. The petition requests the requirement be withdrawn and that a new action be issued which examines claims 1, 2, 4, 6-8, 13, and 23-27 (claims 3, 5, 9-12, 24 and 28 being withdrawn per an earlier restriction/election requirement).

The petition is **GRANTED** for the reasons below.

DECISION

The examiner contends the elected invention is directed to the subcombination of a hydroentangling support fabric whereas amended claims 1-13 are directed to a combination, namely a hydroentangling apparatus comprising a hydroentangling support fabric.

As explained in MPEP 806.05(c), two-way distinctness is necessary to support a restriction between combination and subcombination. Such distinctness is not present in the instant claims, as is readily apparent by comparing combination claim 1 with subcombination claim 23:

Claim 1. A hydroentangling apparatus for the production of a hydroentangled nonwoven product, the improvement comprising:

 a hydroentangling support fabric comprising flat filaments, wherein said support fabric is in a continuous loop or made endless.

Claim 23. An improved hydroentangling support fabric in a hydroentangling apparatus for production of a hydroentangled nonwoven product, the improvement comprising:

 a hydroentangling support fabric comprising flat filaments, wherein said support fabric is in a continuous loop or made endless.

Each and every limitation of claim 23 is present in claim 1 *verbatim*. Accordingly the claims are not patentably distinct from each other and restriction is improper.

Further, the examiner has not shown any burden in examining both sets of claims, particularly given that apparent combination claims have been examined multiple times in earlier actions.

Accordingly, the petition is **GRANTED**.

As the final rejection of August 25, 2009 is incomplete for failing to examine all properly pending claims, it is hereby **VACATED**.

The examiner is instructed to promptly issue a new Office action which treats claims 1, 2, 4, 6-8, 13, and 23-27 on the merits.



Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK NY 10151